

## 11. THE AGENCY FINDINGS

In accordance with applicable law, the FAA makes the following determinations for this project, based upon the appropriate information and data contained in the FEIS and the administrative record.

### **A. The project is consistent with existing plans of public agencies for development of the area surrounding the airport (49 U.S.C. 47106(a)(1)).**

The determination prescribed by this statutory provision is a precondition to agency approval of airport project funding applications. It has been the long-standing policy of the FAA to rely heavily upon actions of metropolitan planning organizations (MPOs) to satisfy the project consistency requirement of 49 U.S.C. 47106 (a) (1) [see, e.g., *Suburban O'Hare Com'n v. Dole*, 787 F.2d 186, 199 (7th Cir., 1986)]. Furthermore, both the legislative history and consistent agency interpretations of this statutory provision make it clear that reasonable, rather than absolute consistency with these plans is all that is required.

Under the provisions of both Federal and state law, the East-West Gateway Coordinating Council (EWGCC) has been designated as the MPO for the St. Louis metropolitan area and given primary responsibility for transportation planning in the region. On December 3, 1997, the EWGCC notified the FAA that it endorsed the EIS on the basis that it represented an accurate assessment of the related costs, operational feasibility, and community and environmental impacts. Furthermore, the EWGCC's board had voted to support Alternative W-1W (FEIS Section 5.2.5.3). Thus, Alternative W-1W is reasonably consistent with the plans of public agencies having broad geographic responsibilities in the area.

If the focus is limited to municipalities where land would be acquired for airport expansion, four of the five municipalities (St. Ann, Edmundson, Berkeley, and Hazelwood) have land-use policies for the acquisition areas consistent with W-1W. Alternative W-1W is not consistent with the zoning plans of the City of Bridgeton, but it is not clear that as a matter of state law, Bridgeton is authorized to enforce a zoning plan that is inconsistent with needed airport development.

The FAA finds that the project is reasonably consistent with the existing plans of public agencies authorized by the state in which the airport is located to plan for the development of the area surrounding the airport. The FAA is satisfied that it has fully complied with 49 U.S.C. 47106 (a)(1).

With regard to this issue, however, the FAA has also reviewed the substantial documentation in the administrative record demonstrating that throughout the

environmental process the STLAA has shown concern for the impact of the proposed development actions on surrounding communities. Moreover, the STLAA has attempted to ensure consistency of its project proposals with the planning efforts of neighboring communities. The administrative record for this ROD includes details of coordination between the STLAA and neighboring jurisdictions concerning local planning proposals, along with documents describing the public meetings, hearings, and other means by which public participation in project planning was accommodated. Further discussion of consistency of the proposed development projects with public agency planning is summarized in the FEIS Section 5.2.5.3.

The proposed Lambert expansion lies almost totally within the boundaries of the City of Bridgeton. The extent to which City of Bridgeton regulations apply to Lambert Airport development is unresolved. Meanwhile, the STLAA has offered to assist the City of Bridgeton in land-use planning activities, to address any issues relating to the proposed Lambert development.

The City of Bridgeton has engaged in land-use planning actions, which appear designed to limit airport expansion. Its local plans and ordinances establish zoning policies (a prohibition on use of lands acquired by public entities to be used for new commercial activities). These ordinances purport to restrict the use of some lands within Bridgeton's jurisdiction (e.g., for the new runway), needed by the STLAA in order to implement important safety and aircraft operation aspects of its preferred alternative.

In any event, it is not clear that the development actions proposed in the MPS would be subject to any of the plans and ordinances adopted by the City of Bridgeton. Thus there may be little or no inconsistency with local plans. Implementation of STLAA's preferred alternative would not be expected to result, after mitigation, in any significant increases of noise on land of these neighboring jurisdictions. With regard to any restrictions on land acquisition by STLAA for essential aviation safety and aircraft operation purposes, the FAA notes that such planning policies may be of questionable applicability and legal validity, both under state and Federal law.

In making its determination under *49 U.S.C. 47106 (a) (1)*, the FAA has considered the fact that local governments have been represented on the EWGCC and have participated as members of that organization in its decision to authorize the new runway project at Lambert (although some of these local governments may have disagreed, as individual EWGCC members, with that ultimate decision). The FAA has also recognized the fact that none of these jurisdictions has regulatory authority over airport operations, since long-established doctrines of Federal preemption preclude these communities from regulating aircraft operations conducted at Lambert.

Given the FAA determination in this ROD, under appropriate Federal law, that there is a compelling need for the proposed Lambert improvements, as documented in the FEIS, it is inappropriate for local communities to attempt to exercise local zoning control in a manner which would conflict with the domestic and international aviation requirements of this airport. If there were a conflict between Federal and local policies, the local policies must give way to the Federal policies, under the doctrine of Federal preemption.

**B. The interest of the communities in or near where the project may be located was given fair consideration (49 U.S.C. 47106(b)(2)).**

The determination prescribed by this statutory provision is a precondition to agency approval of airport development project funding applications. The regional planning process over the past decade and the environmental process for this project-specific EIS, which began in 1995 and extended to this point of decision, provided numerous opportunities for the expression of and response to issues put forward by communities in and near the project location. Nearby communities and their residents have had the opportunity to express their views during the DEIS public comment period, at a public hearing, as well as during the review period following public issuance of the FEIS. The FAA's consideration of these community views is set forth in FEIS Appendices J, U, and V and in Appendices A, B, C, D, E and G of this ROD.

Thus, the FAA has determined that throughout the environmental process, beginning at its earliest planning stages, fair consideration was given to the interest of communities in or near the project location.

**C. The State of Missouri has certified in writing that there is reasonable assurance that the project will be located, designed, constructed and operated in compliance with applicable air and water quality standards (49 U.S.C. Section 47106(c)(1)(B)).**

The determination prescribed by this statutory provision is a precondition to agency approval of airport development project funding applications involving a new runway. By letter dated August 11, 1998, (Appendix I of this ROD), after consultation with the MDNR (the Governor's designated agency for air and water quality), the Governor of Missouri, certified that there is a reasonable assurance that the project will meet all applicable air and water quality standards.

The FAA concludes that the airport project evaluated in the FEIS will be located, designed, constructed and operated so as to comply with applicable air and water quality standards.

**D. Effect on Natural Resources (49 U.S.C. Section 47106(c)(1)(C)).**

Under this statutory provision, after consultation with the Secretary of the Interior and the Administrator of the EPA, the FAA may approve funding of a new runway having a significant adverse effect on natural resources, only after determining that no possible and prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.

As documented in the FEIS, FAA has consulted extensively with both Interior and EPA. For several natural resource impact categories with established significance levels, the FAA finds that, without implementation of the mitigation summarized in Section 6.3 of the FEIS, the selected alternative would have a significant adverse effect. However, given the inability of other alternatives discussed in the FEIS, to satisfy the purpose and needs of the project, we have concluded that no possible and prudent alternative exists to development of the proposed alternative. As discussed in Section 6 of this ROD, and documented throughout the FEIS and the administrative record, every reasonable step has been taken to minimize adverse environmental effects resulting from the project.

In order to consider further mitigation under NEPA, and to address any possible adverse environmental effects resulting from the projects approved in this ROD, the FAA has decided to condition such approval upon the mitigation measures described in Section 6.3 of the FEIS and in Section 6 of this ROD. This conditional approval will be enforced through a special condition included in future Federal airport grants and PFC “use” approvals to the STLAA.

The FAA has determined that all reasonable steps have been taken to minimize any adverse effects on natural resources through mitigation.

**E. Appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations (49 U.S.C. Section 47107(a)(10)).**

The sponsor assurance prescribed by this statutory provision is a precondition to agency approval of airport development project funding applications. In addition to the actions described in Section 11.A of this ROD, the STLAA has worked extensively with local jurisdictions to develop and implement plans and policies to ensure compatible land use in the airport vicinity.

FEIS Section 5.2 describes the current status of zoning and land use planning for lands near the airport. The Airport has an existing noise compatibility program, designed to

either reduce noise at the source or mitigate the noise received by sensitive land uses in the airport vicinity. As explained in the FEIS Section 6.3.1, with planned mitigation, development of the project will not result in any increased significant impacts on non-compatible land uses.

The FAA requires satisfactory assurances, in writing, that appropriate action, including the adoption of zoning laws, has been or will be taken to restrict, to the extent reasonable, the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. Appendix I of the FEIS contains Lambert's land use compatibility assurance.

Based upon the administrative record for this ROD, the FAA has concluded that existing and planned noise reduction programs at Lambert provide for appropriate action to ensure compatible land use in the airport vicinity.

**F. Clean Air Act, Section 176 (c) (1) Conformity Determination Regarding Lambert-St. Louis International Airport Master Plan Supplement Development Actions (42 U.S.C. Section 7506(c)).**

The determination prescribed by this statutory provision is a precondition for Federal Agency support or approval of airport development actions which are projected to exceed the *de minimis* air emission levels prescribed at 40 CFR Section 93.153. The EPA regulations more generally governing the conformity determination process are found at 40 CFR Part 93, Subpart B.

In the 1997 FEIS, the FAA made a Draft General Conformity Determination on the Lambert MPS proposals (FEIS Sections 5.5.6 and 5.5.7). Pursuant to EPA regulations, the FAA announced the availability of the Draft General Conformity Determination in the *St. Louis Post Dispatch*, and provided notice to appropriate Federal, state and local public agencies. The agencies and the general public were invited to review and comment on the Draft General Conformity Determination. Comments received on the Draft General Conformity Determination and responses to those comments are presented in the Final General Conformity Determination. The FEIS Appendix A presents letters from the EPA (dated November 7, 1997) and MDNR (dated November 20, 1997). In their letters, these air quality agencies concurred with the conformity determination analysis conclusions for general conformity under the Clean Air Act. The Final General Conformity Determination was prepared and a notice of the FAA's determination was published in the *St. Louis Post Dispatch* on June 28, 1998. No comments or requests were received regarding the Final General Conformity Determination.

In order to achieve public disclosure and to address community concerns, the FEIS presented an analysis of air quality impacts utilizing the regulatory structure set forth in the EPA conformity regulations. The FEIS analysis (Section 5.5) demonstrates that the project would not cause or contribute to any new exceedances of air quality standards. As confirmed by the MDNR, the project conforms to the Missouri SIP.

Because projects at Lambert are governed by the moderate non-attainment designation for ozone and the maintenance area designation for carbon monoxide, the FAA needed to determine that the project will not cause or contribute to any new violations of the NAAQS in the project area or the metropolitan area. The FEIS and other supporting documentation provided the FAA the information needed to make that determination. The computer modeling predicted that the carbon monoxide NAAQS would not be exceeded in the future with or without the proposed improvements. The FEIS showed that the project will not increase the frequency or severity of any existing violations of any NAAQS and that the project will not delay timely attainment of the NAAQS or any required interim emission reduction in the project area.

Based upon the air quality information and discussion presented in the FEIS and its appendices, the Final General Conformity Determination, and upon supporting material in the administrative record, the FAA finds that the development actions will not cause or contribute to any air quality standards being exceeded and conform to the Missouri SIP and the NAAQS.

**G. For this project, involving new construction which will directly affect wetlands, there is no practicable alternative to such construction. The proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. (Executive Order 11990, as amended).**

This executive order requires all Federal agencies to avoid providing assistance for new construction located in wetlands, unless there is no practicable alternative to such construction, and all practicable measures to minimize harm to wetlands are included in the action.

The FEIS, Section 5.11 documents that the preferred development alternative selected by the STLAA from the MPS will directly affect approximately 9.7 acres of wetlands. The FEIS alternatives analysis (FEIS Section 3.3) identifies no reasonable alternative to developing a new runway at Lambert. The FAA additionally concludes that there is no practicable alternative to constructing such a runway, resulting in these wetland impacts, given the purposes and needs documented in the FEIS, consideration of environmental and economic factors, and land-use issues.

The FEIS, Section 5.11 states that the S-1 development alternative of a 9,000-foot runway would result in impacts to more wetlands (10.8 acres) than would Alternative W-1W (9.7 acres). The FEIS demonstrates that these are low quality wetlands. Two of their significant functions, floodwater attenuation and floodwater storage, would be fully mitigated within the airport basin. Additionally wetland functions for these wetlands will be mitigated as part of the overall wetlands mitigation program.

Alternatives of staggering runway ends or relocating the entire runway are not practicable, because, among other reasons, they would increase delays, have additional detrimental environmental effects, require considerable additional cost and complicate air traffic control procedures. Considering these and other reasons described more fully in Section 3.0 of the FEIS, and taking into consideration cost, existing air traffic control and aviation technology and logistics, in light of the overall purpose of the runway project, the FAA finds that there is no practicable alternative to the wetland loss associated with the 9,000-foot runway.

As noted in the FEIS Section 5.11, the COE has worked with the FAA as a cooperating agency to ensure that all practicable measures will be taken to minimize harm to wetlands, impacted through development of the selected alternative. This will be accomplished by using BMPs during construction and developing a wetland compensatory mitigation site. Following issuance of this ROD, the COE, in consultation with the MDNR, will complete its processing of a Section 404 permit, required for the STLAA to proceed with development impacting wetlands. The project approvals in this ROD and this wetlands determination are expressly conditioned upon permit approval and conditions to be outlined by the COE, and upon the STLAA accomplishing the wetlands mitigation measures identified in the FEIS and any COE permit approval.

Although it is generally preferable to attempt to mitigate wetland loss through replacement wetlands in the same watershed, this is not the case where such replacement would create man-made wetlands in the vicinity of airport aircraft movement areas. FAA Advisory Circular 150/5300-33, dated May 1, 1997, states the FAA's opposition to wetland mitigation projects located within 10,000 feet of airports serving turbine-powered aircraft (such as Lambert), due to the safety hazard such wetlands present as attractants of wildlife, which significantly increase the risk of bird/aircraft strikes.

The safety standards set forth in this FAA policy statement are recommended for the operators of all public-use airports. Furthermore, for airport sponsors who are the recipients of Federal grant funding, adherence to safety standards set forth in FAA advisory circulars is a requirement of standard grant assurance #34, as acknowledged in paragraph 4-6.a. of Advisory Circular 150/5200-33.

This recent agency policy guidance supports the FEIS determination that the replacement wetlands for the Lambert development actions should not be located in the vicinity of the airport. Given the potential hazard associated with the creation of wildlife attractions within 10,000 feet of jet runways, the FAA and COE agreed that it is prudent to permit the STLAA to replace these impacted wetlands outside of the Lambert watershed.

As detailed in the FEIS Section 6.3.7, a wetland mitigation program has been developed to offset the impacts of the project and to recognize other long-term biological problems. The mitigation plan calls for replacing the filled wetlands. Several candidate wetland mitigation sites have been examined. Final mitigation requirements will be determined during the Section 404 permit application and review process in consultation with the COE.

**H. For this project, involving a significant encroachment on a floodplain, there is no practicable alternative to the selected development of the preferred alternative. The proposed action conforms to all applicable state and/or local floodplain protection standards. (Executive Order 11988).**

This executive order, together with applicable DOT and FAA orders, establish a policy to avoid supporting construction within a 100-year floodplain where practicable, and where avoidance is not practicable, to ensure that the construction design minimizes potential harm to or within the floodplain.

Section 5.12 of the FEIS explains that, without mitigation, construction and operation of the MPS preferred alternative could result in adverse floodplain impacts in the Coldwater Creek floodplain.

As outlined in the "Alternatives" discussion in Section 5 of this ROD, and in the FEIS, there is no practicable alternative to the selected alternative. Development of this alternative achieves the purposes and needs for the projects in the most cost-effective manner with the least impact on the surrounding land uses. As shown in the FEIS Section 6.3.8, a mitigation program has been designed, which will create a floodplain so that there would be no net loss of flood storage capacity or increased risk of loss of human life or property damage. This program has been designed to comply with applicable requirements of the permitting agencies, with whom the FAA and the STLAA have been coordinating, in order to ensure that the construction design minimizes potential harm to or within the floodplain. Each of these agencies have agreed with the mitigation plan in concept, and coordination will continue throughout the permitting process.



**I. Relocation Assistance (*42 U.S.C. Section 4601 et seq.*).**

These statutory provisions, imposed by Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, require that state or local agencies, undertaking Federally-assisted projects which cause the involuntary displacement of persons or businesses, must make relocation benefits available to those persons impacted.

As detailed in the FEIS Section 5.3, the selected development alternative will displace approximately 2,324 households, 75 businesses, and 6 schools, 6 churches, and one nursing home.

The FAA will require Lambert to provide fair and reasonable relocation payments and assistance payments pursuant to the provision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Comparable decent, safe, and sanitary dwellings are available for occupancy on the open market.

**J. For any use of lands with significant historic sites, there is no prudent and feasible alternative to using the land; the project includes all possible planning to minimize harm resulting from the use (*49 U.S.C. Section 303(c)*).**

The FEIS Section 5.7 concluded that the MPS development actions would involve either the use or constructive use of resources protected by this statutory provision, more commonly referred to as "4(f)" resources. The selected alternative would directly affect four park and recreation area Section 303 sites and indirectly affect four sites. One of the sites, Oak Valley Park, would have both direct and indirect effects. Three of the sites are also protected under Section 6(f) of the Land and Water Conservation Fund Act of 1965 (*16 U.S.C. Section 460l-8(f)3*).

In terms of avoidance alternatives, review of the tiered alternatives evaluation prepared in Section 3.0 of the FEIS indicated that there are no prudent and feasible alternatives to the identified impacts to Section 303 and 6(f) sites. The FAA has coordinated with the public and agencies having jurisdiction over the impacted sites to determine site significance and to develop mitigation measures necessary to meet Section 303 and 6(f) requirements. The agencies involved in the coordination were the DOI, the MDNR, the Council, STLAA, and the City of Bridgeton.

A coordination meeting with the City of Bridgeton was held on April 18, 1997, with the mayor and key staff members to discuss Draft EIS comments relative to Section 303/6(f) issues, and to solicit input from the City of Bridgeton regarding future plans and goals for their parks and recreation program. Items listed in the City of Bridgeton's comprehensive plan were discussed regarding candidate mitigation options. The City

of Bridgeton has stated that it will not initiate the Section 6(f) conversions for Lambert. Measures to minimize harm to Sections 303 and 6(f) resources are summarized in Section 6.3.5 of the FEIS.

As discussed at FEIS Section 5.8, the FAA determined the project will impact five structures of historic significance. Assuming such "historical significance" and such "use," the referenced FEIS Section 5.8 demonstrates that there is no prudent or feasible alternative to any such use. Furthermore, based upon the planned mitigation (discussed at FEIS Section 6.3.6), the FAA concludes that there has been all possible planning to minimize any harm resulting from use of historic or archaeological resources.

The Missouri SHPO has been consulted concerning these determinations. Treatment measures for these adversely affected historic properties are included within the MOA for the selected alternative, W-1W. It stipulates measures to be implemented to avoid, reduce or mitigate the adverse effects this project will have on historic properties. The MOA was signed by the FAA, the Missouri SHPO, and the Advisory Council. The STLAA signed as a concurring party. The City of Bridgeton was invited to participate as a concurring party to the MOA, but it chose not to concur in the MOA. The Advisory Council executed the MOA on May 29, 1998. A copy of the MOA is included in Appendix H of this ROD.

**K. There are no disproportionately high or adverse human health or environmental effects from the project on minority or low-income populations. (Executive Order 12898).**

Environmental justice concerns were addressed in Section 5.3 of the FEIS, and it was concluded that no minority or low-income group would be disproportionately affected by displacements occurring as a result of the selected alternative. The FEIS contains a discussion of environmental justice issues relative to the selected alternative. It was concluded that the impacts from the proposed MPS improvements will not disproportionately affect minority or low-income communities.

**L. The FAA has given this proposal the independent and objective evaluation required by the Council on Environmental Quality. (40 CFR 1506.5).**

As the FEIS outlined, a lengthy process led to the ultimate identification of the selected alternative, disclosure of potential impacts and selection of appropriate mitigation measures. This process began with the FAA competitive selection of an independent EIS contractor, continuing throughout the preparation of the DEIS and FEIS, and culminating in this ROD. The FAA provided input, advice and expertise throughout the planning and technical analysis, along with administrative direction and legal review of

the project. From its inception, the FAA has taken a strong leadership role in the environmental evaluation of this project and has maintained its objectivity.